

November 9, 1998

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'98 NOV 10 A9:12

BEFORE THE PRESIDING OFFICER

OFFICE OF SEC  
RULES AND  
ADJUDICATION

In the Matter of	)	
	)	
INTERNATIONAL URANIUM (USA)	)	Docket No. 40-8681 MLA-4
CORPORATION	)	
	)	
(Receipt of Material from	)	
Tonawanda, New York)	)	

NRC STAFF RESPONSE TO STATE OF UTAH MOTION TO HEAR  
RELATED LICENSE AMENDMENT REQUEST OR IN THE ALTERNATIVE  
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

INTRODUCTION

This proceeding concerns the May 8, 1998, application of International Uranium (USA) Corporation (IUSA or Licensee) for a materials license amendment (issued July 23, 1998) to allow IUSA to receive and process material from the Ashland 2, Formerly Utilized Sties Remedial Action Program (FUSRAP) site near Tonawanda, New York. *International Uranium (IUSA) Corp.*, LBP-98-21, 48 NRC \_\_\_\_, slip op. at 1-2, 11 (September 1, 1998).

On October 23, 1998, the State of Utah (State), the intervenor in the instant proceeding, filed a motion requesting consolidation of consideration of the amendment concerning the Ashland 2 material with a separate, October 15, 1998, application to receive and process material from the Ashland 1 FUSRAP site near Tonawanda, New York (Ashland 1 Application). State of Utah's Motion to Hear Related License Amendment Request or in the Alternative Request for Hearing and Petition for Leave to Intervene, dated October 23, 1998 (Motion), at 3-4. Alternatively, the State asks that it be granted leave to intervene in

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a separate proceeding concerning the Ashland 1 Application. *Id.* at 4-5. The State "incorporates herewith its Petitions dated July 23, 1998 and August 18, 1998, in their entirety" into the Motion and asserts that the State is concerned about (1) whether the materials to be processed contain listed hazardous wastes and (2) whether the materials are being processed primarily for their source content. Motion at 5.

For reasons set forth below, the Motion should be denied in that the Presiding Officer lacks jurisdiction to grant consolidation of a separate licensing action (concerning Ashland 1 materials) in this proceeding or to rule on a petition for leave to intervene concerning that application for an amendment authorizing receipt of the Ashland 1 materials.

#### DISCUSSION

The subject matter of this proceeding is the May 8, 1998 application, subsequently granted by the July 23, 1998, amendment to the IUSA's license (License No. SUA-1358). That amendment allowed the receipt and processing of uranium-bearing material (*i.e.*, alternate feed material -- material other than natural uranium ore) at its White Mesa Mill near Blanding, Utah. The Presiding Officer derives his jurisdiction over the subject matter of this amendment proceeding from the August 4, 1998, *Federal Register* notice that designated him as the presiding officer to rule on petition for leave to intervene on the license amendment concerning the Ashland 2 material and conduct any hearing ordered. 63 Fed. Reg. 42887 (August 11, 1998).<sup>1</sup>

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<sup>1</sup>The Presiding Officer in the instant proceeding also issued a notice of opportunity for a hearing regarding the amendment authorizing receipt and processing of the Ashland 2  
(continued...)

Matters in licensing proceedings are limited to the subject matter encompassed by the notice of opportunity for hearing published in the *Federal Register*. See 10 C.F.R. §§ 2.105, 2.714(a), 2.1205. *Portland General Electric Co.* (Trojan Nuclear Plant), ALAB-534, 9 NRC 287, 289-90 n.6 (1979) (boards lack the power to explore issues outside the notice of hearing). One may not litigate issues that are not germane to the permission or license amendment sought. See, e.g., *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 331-332 (1983) (qualifications of a Commissioner not germane to facility restart proceeding).

The October 15, 1998, application concerning the Ashland 1 material is not part of the amendment at issue in this proceeding. That amendment request is a separate action and is the subject of a separate notice of opportunity for hearing. See 63 Fed. Reg. 59340 (November 3, 1998).<sup>2</sup> Unless the Presiding Officer is designated to rule on petitions for leave to intervene, and conduct any hearing ordered, concerning the Ashland 1 matter, the Presiding Officer lacks the authority to grant the Motion. Consequently, the request for

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<sup>1</sup>(...continued)  
materials. See 63 Fed. Reg. 55412 (October 15, 1998).


<sup>2</sup> Pursuant to that notice, a hearing request would be timely if filed by December 3, 1998. The notice states that the October 15, 1998, amendment application of IUSA seeks permission to receive and process uranium-bearing material from the Ashland 1 and Seaway Area DFUSRAP sites, located near Tonawanda, New York, and currently being remediated by the U.S. Army Corps of Engineers and associated with the uranium ore processing activities conducted by the Manhattan Engineering District in the mid-1940s. 63 Fed. Reg. 59340. The notice also indicated that the request involved the processing of alternate feed materials, which is addressed in Staff guidance entitled "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores," 60 Fed. Reg. 49296 (September 22, 1995) (Alternate Feed Guidance). *Id.*

consolidation of the Ashland 1 matter with the ongoing proceeding, or alternatively, for leave to intervene concerning that matter, should be denied.<sup>3</sup>

CONCLUSION

For the reasons set forth above, the Presiding Officer lacks jurisdiction to grant that request to consolidate a separate amendment request with the instant proceeding or, alternatively, to rule on the petition for leave to intervene. Therefore, the Motion should be denied.

Respectfully submitted,

  
Mitzi K. Young  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 9th day of November 1998

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<sup>3</sup>The Motion also fails to set forth sufficient information to satisfy the requirements for a petition for leave to intervene pursuant to 10 C.F.R. § 2.1205. The concerns identified, *see* Motion at 5, may be germane to a proceeding concerning the Ashland 1 materials. Nevertheless, the Motion merely incorporates by reference the entire intervention petition and amended intervention petition the State filed regarding the Ashland 2 materials in this proceeding. *See id.* Such incorporation is disfavored in NRC practice and does not particularize an injury-in-fact that would be suffered by the grant of the proposed amendment. *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI-89-3, 29 NRC 234, 240-41(1989) (party must summarize the facts being relied on in the specific documents cited); *Tennessee Valley Authority* (Browns Ferry Nuclear Plant, Units 1 and 2), LBP-76-10, 3 NRC 209, 216 (1976) (no incorporation of massive document by reference as basis for, or a statement of, contentions); *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), LBP-85-20, 21 NRC 1732, 1741 (1985) (must identify, summarize and append specific portions of documents), *rev'd and remanded on other grounds*, CLI-86-8, 23 NRC 241 (1986).

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NUCLEAR REGULATORY COMMISSION

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BEFORE THE PRESIDING OFFICER

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In the Matter of )  
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INTERNATIONAL URANIUM (USA) )  
CORPORATION )  
)  
(Receipt of Material from )  
from Tonawanda, New York) )

Docket No. 40-8681-MLA-4

OFFICE OF SECRETARY  
OF RULEMAKINGS AND  
ADJUDICATIONS STAFF

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO STATE OF UTAH MOTION TO HEAR RELATED LICENSE AMENDMENT REQUEST OR IN THE ALTERNATIVE REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE" in the above-captioned proceeding have been served on the following by deposit in the United States Mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of November, 1998:

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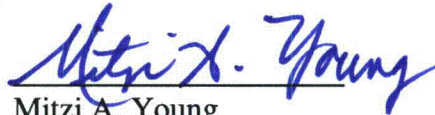
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